

## Bureau of Reclamation, Interior

## § 426.2

county regulations governing subsurface waste disposal systems.

(The Reclamation Act of June 17, 1902, as amended and supplemented, Articles 34, and 25 of the Repayment Contract IIR-1534 dated Sept. 20, 1948, between the United States and the Okanagon Irrigation District)

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### PART 426—ACREAGE LIMITATION RULES AND REGULATIONS (Eff. 1-1-98)

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AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz-1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

SOURCE: 61 FR 66805, Dec. 18, 1996, unless otherwise noted.

#### § 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects and the pricing of Federal Reclamation

project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

#### § 426.2 Definitions.

As used in these rules:

*Acreage limitation entitlements* mean the ownership and nonfull-cost entitlements.

*Acreage limitation provisions* mean the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

*Acreage limitation status* means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

*Commissioner* means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

*Compensation rate* means a water rate applied, in certain situations, to water delivery to ineligible land that is not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would apply to the landholder if the landholder was to receive irrigation water on land that exceeded a nonfull-cost entitlement.

*Contract* means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that portion that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

*Contract rate* means the assessment, as set forth in a contract, that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

*Dependent* means any natural person within the meaning of the term dependent in the Internal Revenue Code

of 1954 (26 U.S.C. 152) and any subsequent amendments.

*Direct* when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or holder of title, or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

*Discretionary provisions* refer to Sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

*District* means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

*Eligible*, except where otherwise provided, means permitted to receive an irrigation water supply from a Reclamation project under applicable Federal reclamation law.

*Entity*, see definition of *legal entity*.

*Excess land* means nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

*Exempt*, except where otherwise provided, means not subject to the acreage limitation provisions.

*Extended recordable contract* means a recordable contract whose term was extended due to moratoriums established in 1976 and 1977 on the sale of excess land.

*Full cost or full-cost rate* means an annual rate established by Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual oper-

ation, maintenance, and replacement costs required under Federal reclamation law.

*Full-cost charge* means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

*Indirect*, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or holder of title, or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or holder of title, or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations. A security interest held by lenders, who are not otherwise considered a landholder of the land in question, in a legal entity or in a land parcel will not be considered an indirect interest or a beneficial interest for purposes of these regulations.

*Individual* means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

*Ineligible*, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

*Intermediate entity* means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

*Involuntary acquisition* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

*Irrevocable election* means the execution of the legal instrument that a landholder subject to prior law provisions submits to become subject to the discretionary provisions of Federal reclamation law.

*Irrevocable elector* means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

*Irrigable land* means land so classified by Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

*Irrigation land* means any land receiving water from a Reclamation project facility for irrigation purposes in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

*Irrigation water* means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with Reclamation.

*Landholder* means a party that directly or indirectly owns or leases non-exempt land.

*Landholding* means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

*Lease* means any arrangement between a landholder (the lessor) and another party (the lessee) under which the economic risk and the use or possession of the lessor's land is partially or wholly transferred to the lessee. If a management arrangement or consulting agreement is one in which the manager or consultant performs a service for the landholder for a fee, but does not assume the economic risk in the farming operation, and the landholder retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation, then the agreement or arrangement will not be considered to be a lease.

*Legal entity or entity* for the purpose of establishing application of the acreage limitation entitlements means, but is not limited to, corporations, partnerships, organizations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common. For purposes of the information requirements specified in § 426.18 only, trusts will be considered to be legal entities.

*Limited recipient* means any legal entity established under State or Federal law benefiting more than 25 natural

persons. In order to become limited recipients, legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Nondiscretionary provisions* means sections 390cc(b) and 390ii through 390zz 1 of the RRA.

*Nonexempt land* means either irrigation land or irrigable land that is subject to the acreage limitation provisions. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

*Nonfull-cost entitlement* means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

*Nonfull-cost rate* means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

*Nonproject water* means water from sources other than Reclamation project facilities.

*Nonresident alien* means any natural person who is neither a citizen nor a resident alien of the United States.

*Operation and maintenance costs* or *O&M costs* mean all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

*Ownership entitlement* means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

*Part owner* means an individual or legal entity that has a beneficial interest in a legal entity, but does not own 100 percent of that legal entity. A lender, who is not otherwise considered a landholder of the land in question, with

a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.

*Prior law* means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the RRA, and as amended by the RRA.

*Prior law recipient* means an individual or legal entity that has not become subject to the discretionary provisions.

*Project* means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

*Public entity* means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

*Qualified recipient* means an individual who is a citizen or a resident alien of the United States or any legal entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

*Reclamation* means the Bureau of Reclamation, U.S. Department of the Interior.

*Reclamation fund* means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

*Recordable contract* means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner

in excess of the ownership limitations of Federal reclamation law.

*Resident alien* means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

*RRA* means the Reclamation Reform Act of 1982, Public Law 97-09293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

*Secretary* means Secretary of the U.S. Department of the Interior.

*Standard certification or reporting forms* mean forms on which landholders provide complete information about the directly and indirectly owned and leased nonexempt lands in their landholdings.

*Water year* means a 365-day period (or 366 days during leap years) whose start date is specified within a contract between Reclamation and the district or through some other agreement between Reclamation and the district.

*Westwide* means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

**§ 426.3 Conformance to the discretionary provisions.**

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.16 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and